

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

IAN M. DOTY,  
Plaintiff,

vs

COMMISSIONER OF THE  
SOCIAL SECURITY ADMINISTRATION,  
Defendant.

Case No. 1:11-cv-424

Weber, J.  
Litkovitz, M.J.

**REPORT AND  
RECOMMENDATION**

This matter is before the Court on plaintiff's motion requesting that he be released from the financial obligation of having to pay the full filing fee in the above-styled case. (Doc. 12). The motion has been referred to the undersigned for a Report and Recommendation. (See Doc. 13).

As background, plaintiff brought this action against the Commissioner of the Social Security Administration after a prior complaint filed by plaintiff against the same defendant was dismissed for lack of jurisdiction in April 2011. *See Doty v. Commissioner of Social Security*, Case No. 1:10cv892 (Barrett, J.; Litkovitz, M.J.). In the prior action, the Court granted plaintiff pauper status and ordered collection of the full filing fee over time based on the schedule set forth in the Prison Litigation Reform Act (PLRA), 28 U.S.C. § 1915(b)(1), (2). *See id.* (Doc. 2).

On June 27, 2011, plaintiff filed an application for leave to proceed *in forma pauperis* for the purpose of initiating the instant action. (Doc. 1). On June 29, 2011, the Court granted plaintiff's *in forma pauperis* motion and ordered the collection of the full filing fee over time based on the schedule set forth in the PLRA. (Doc. 2). On the same date, the undersigned also issued a Report and Recommendation to dismiss the complaint for lack of jurisdiction. (Doc. 4).

The District Court subsequently adopted the Report and Recommendation and dismissed the complaint. (*See* Docs. 9, 10).

Plaintiff then filed the instant motion essentially requesting that the Court vacate its Order of June 29, 2011 requiring the withdrawal of funds from his prison account to pay the full filing fee. Plaintiff contends that because he filed two complaints against the Commissioner of the Social Security Administration, both of which were dismissed for lack of jurisdiction, he should only be required to pay the court costs in one of the cases. (*See* Doc. 12). Plaintiff's motion is not well-taken.

The obligation to pay the full filing fee attaches when a prisoner files his complaint and is not obviated by the subsequent dismissal of the complaint. *See McGore v. Wrigglesworth*, 114 F.3d 601, 607 (6th Cir. 1997). As the Sixth Circuit in *McGore* explained:

Even a voluntary dismissal of a complaint . . . does not eliminate a prisoner's obligation to pay the required filing fees. Section 1915(b)(1) compels the payment of the respective fees at the moment the complaint . . . is filed. *See In re Tyler*, 110 F.3d [528,] 529-30 [(8th Cir. 1997)]. Any subsequent dismissal of the case does not negate this financial responsibility. *Id.*; *see also Thurman v. Gramley*, 97 F.3d 185, 187 (7th Cir. 1996).

*McGore*, 114 F.3d at 607.

The fact that plaintiff filed a prior complaint against the same defendant, which was similarly dismissed, does not release him from his obligation to pay the full filing fee in both cases. Plaintiff was well aware when he initiated the instant action that his initial complaint had been dismissed on jurisdictional grounds and that he nevertheless was obligated under the PLRA to pay the full filing fee in the dismissed case. Yet, he still chose to file a second complaint, which was subject to the same fee-payment requirements under the PLRA, and faced dismissal

based on the same jurisdictional grounds.

Requiring plaintiff to pay the full filing fee in both cases is not unfair and furthers Congress's intent in enacting the PLRA to deter frivolous prisoner litigation:

By choosing to file a new action, [a prisoner] invokes the jurisdiction of the federal court and avails himself of the process afforded by that court. Even if the end result is an order of summary dismissal . . . , the action will require a considerable amount of time and effort on the part of the district court and the court staff. The requirement that the full fees be paid for these actions-whatever their merit or disposition-will provide a prisoner with the incentive to consider carefully whether or not to submit a new action to the district court.

*In re Alea*, 286 F.3d 378, 382 (6th Cir. 2002). *Cf. Goins v. Decaro*, 241 F.3d 260, 261 (2nd Cir. 2001) ("The PLRA makes no provision for return of fees partially paid or for cancellation of the remaining indebtedness in the event that an appeal is withdrawn. That is not surprising, since a congressional objective in enacting the PLRA was to make all prisoners seeking to bring lawsuits or appeals feel the deterrent effect created by liability for filing fees.") (internal quotation and citation omitted).

Although the Sixth Circuit in *In re Alea* addressed prisoner filing fee requirements in the context of the "three-strikes" provision of the PLRA,<sup>1</sup> the Court is persuaded by the Sixth Circuit's reasoning that as a prisoner subject to the PLRA, plaintiff cannot escape the financial obligation imposed by that statute of paying the full filing fee in both civil actions that he filed

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<sup>1</sup>The so-called "three strike" provision of the PLRA provides:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

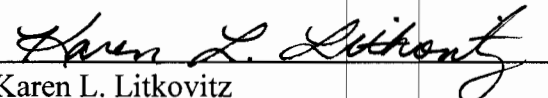
28 U.S.C. § 1915(g).

against the Commissioner of the Social Security Administration.

Accordingly, the undersigned concludes that plaintiff is not entitled to relief from the requirement of paying the full filing fee in this case. It is therefore **RECOMMENDED** that plaintiff's motion (Doc. 12) be **DENIED**.

**IT IS SO RECOMMENDED.**

Date: 9/29/2011  
cbc

  
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Karen L. Litkovitz  
United States Magistrate Judge

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